

Exhibit G

COPY

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1 UNITED STATES DISTRICT COURT
2 FOR THE SOUTHERN DISTRICT OF CONNECTICUT
3 CASE NO.: 7:15-cv-0261-PKC

4 JULIE CLARIDGE & HELEN MARSH,

5 Plaintiffs,

6 -against-

7 NORTH AMERICAN POWER & GAS, LLC,

8 Defendant.

9 -----x
10 April 7, 2016
11 9:30 a.m.

12
13 VIDEOTAPED DEPOSITION of WILLIAM KINNEARY,
14 taken by the Plaintiff, held at Dolce Norwalk
15 Center, 32 Weed Avenue, Norwalk, Connecticut 06850,
16 before Victoria Russo, a Certified Shorthand
17 Reporter and Notary Public within and for the State
18 of Connecticut, New York and New Jersey.
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15
16 ALSO PRESENT:

17 Seth Hopson, General Counsel
18 North American Power & Gas

19 Ron Marrazzo, Videographer
20
21
22
23
24
25

1 WILLIAM KINNEARY

APRIL 7, 2016

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1 THE VIDEOGRAPHER: We are now on the
2 record. It is, approximately, 9:28 a.m. It is
3 April 7, 2016. This is the deposition of William
4 Kinneary in the matter of Claridge versus North
5 American Power & Gas. The case number is
6 7:15-cv-01261-PKC.

7 The location at which this deposition
8 is being taken is Dolce Norwalk located at 32 Weed
9 Avenue in Norwalk, Connecticut. Our stenographic
10 reporter is Vicki Russo representing NorthStar
11 Deposition Services and currently speaking is the
12 videographer, Ron Marrazzo, representing NorthStar
13 Deposition Services.

14 Will Counsel please now identify
15 themselves, their firms and parties they represent.

16 MR. BLANKINSHIP: My name is Greg
17 Blankinship with Finkelstein, Blankinship,
18 Frei-Pearson & Garber and we represent the
19 Plaintiffs.

20 MR. ROMAN: Antonino Roman with
21 Finkelstein, Blankinship, Frei-Pearson & Garber for
22 the Plaintiffs.

23 MR. SIACHOS: Peter Siachos with
24 Gordon & Rees representing the Defendant.

25 MR. HOPSON: Seth Hopson, General

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1 Counsel for North American Power.

2 THE VIDEOGRAPHER: We can now swear
3 in the witness.

4 W I L L I A M K I N N E A R Y,
5 having been first duly sworn before a Notary Public
6 of the State of Connecticut was examined and
7 testified as follows:

8 EXAMINATION

9 BY MR. BLANKINSHIP:

10 Q. Good morning, Mr. Kinneary. I wanted
11 to say I very much appreciate your time being here
12 for today's deposition. I would like to start by
13 going over some ground rules for the deposition. I
14 know we have been over these before, but I ask your
15 indulgence because you have different Counsel and I
16 think it is good so that we are all on the same
17 page.

18 So, I will be asking you questions
19 today. From time to time your attorney may object
20 to those questions but unless he tells you not to
21 answer, you can please go ahead and answer the
22 question. Now, you can, of course, confer with your
23 Counsel but you cannot do so after I have asked a
24 question and before you answer. In other words, if
25 there is a question pending, it is inappropriate to

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1 is in, as I understand, in New Jersey and Rhode
2 Island that each customer has a unique NAP customer
3 number?

4 A. That is correct.

5 Q. And under price that's the specific
6 rate that the customer paid that month?

7 MR. SIACHOS: Objection to form.

8 You can answer.

9 A. I have to qualify that by saying it is
10 the billed amount divided by the billed volume. It
11 is possible depending on how the utility bills for
12 us that it could be -- it could reflect the rate in
13 that individual month or it could reflect the rate
14 in a prior month because some utilities bill based
15 on the rate and effect on the first day of the meter
16 read cycle, some on the last day of the meter read
17 cycle and some prorate over that period.

18 So, all I can say for sure it is the
19 billed amount divided by the billed volume.

20 Q. I see. Would this be the price that
21 the customer would see on their bill?

22 A. Depending on how the utility displays
23 it, the customer would definitely see on the bill
24 two things, the billed amount and the billed volume.
25 They can divide one by the other and see the price,

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1 Q. Well, over time. Maybe we can start
2 when you first -- let's back up a smidge.

3 When did North American Power first
4 start marketing to New York consumers for
5 electricity?

6 A. To the best of my knowledge, around
7 June or July of 2011 for electricity.

8 Q. And how did -- what were the means by
9 which North American Power marketed at that time?

10 A. I am not exactly sure what means we
11 used at that time but, most likely, it would be
12 direct mail or it may have been through our direct
13 sale network group and it is also possible it was
14 telemarketing, but I cannot tell you which of these
15 were in effect at a point in time.

16 Q. So, the first thing you mentioned was
17 direct mail, the last is telemarketing and the third
18 one was direct marketing?

19 A. Yes, we had a network marketing group.
20 These would be people who convinced their friends,
21 neighbors, coworkers, family members to purchase
22 from North American Power.

23 Q. Is that sometimes called multi-level
24 marketing?

25 A. Yes, it is.

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1 sent to New York customers who signed up for a --
2 well, who signed up for North American Power's
3 services?

4 A. Well, the first one is. Yes, the
5 second one. I believe they all are.

6 Q. And if you look at the first one under
7 where it says "account information", there are
8 places for particular customers' identification
9 information and the price to be dropped in; do you
10 see where it says "North American Power's customer
11 rate is fixed for the two first two months and
12 variable on a monthly basis thereafter"?

13 A. Yes, I do.

14 Q. Would you consider this to be a fixed
15 rate contract or a variable rate with a two-month
16 introductory rate?

17 A. This is a variable rate with a
18 two-month introductory rate.

19 Q. Is there a difference between a --
20 strike that.

21 Earlier I believe we saw a welcome
22 letter that identified a three-month fixed rate?

23 A. That's correct.

24 Q. So, is there a dividing line between
25 when an introductory rate is so long that it becomes

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1 Q. And for this it is just a one-month
2 introductory?

3 A. Yes, and that makes me question my
4 answer to the second one. If I knew what date these
5 were produced, I could tell you more exactly.

6 Q. And I take it the fourth one is also a
7 variable rate offering?

8 A. Yes, because the fourth one says it
9 clearly. The second one didn't.

10 Q. So, are these typical of the variable
11 rate letters that North American Power sent to New
12 York consumers?

13 MR. SIACHOS: Objection to form.
14 You can answer.

15 A. I believe so.

16 MR. BLANKINSHIP: Exhibit 9.

17 (Document Bates labeled NAPG-Clar
18 000098 was marked as Exhibit 9 for identification.)

19 BY MR. BLANKINSHIP:

20 Q. Before you look at this document, I
21 had a quick question.

22 Is there a difference in the way in
23 which North American Power sets the variable rate
24 during the period in which you were just offering
25 variable rate products as opposed to the period when

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1 pricing sheets which I think disclose some of that
2 anyway.

3 Does North American Power charge the
4 same variable rate to all of its variable rate
5 customers within a utility in New York leaving aside
6 the step-up or convenience rate?

7 MR. SIACHOS: Object to the form.

8 You can answer.

9 A. The answer is yes.

10 Q. Has that been true for the entire time
11 you had a variable rate in New York?

12 A. I don't know the answer to that
13 question. It is possible. I would say yes.

14 Q. So we are going -- a little bit later
15 we are going to look at some documents that refer to
16 variable rate one and variable rate two.

17 A. That's what made me think about it
18 because I think that we may have had, and if I look
19 at those documents, I can explain. I think we may
20 have had for some period of time a different
21 variable rate for network marketed customers than we
22 did for non-network marketing customers resulting in
23 that plan one and two.

24 Q. By "network", you meant the
25 multi-level marketing?

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1 product had been a minimum 25 percent green and an
2 optional a hundred percent green. So, we purchased
3 renewable energy credits which provide those
4 percentages in the product.

5 Q. Does North American power disclose to
6 its customers that its rates are a little higher
7 because it buys renewable energy credits?

8 A. We disclose that there are energy
9 credits. I don't tell them their rates are higher
10 because of that. It is part of our basic product.
11 You can't buy it from us without that product but we
12 wouldn't want to sell it. We are good corporate
13 citizens.

14 Q. What is the estimate of credit volume
15 required to meet the state RPS?

16 A. Since the RPS in New York State does
17 not have to be met by us but met by the utility,
18 that doesn't apply in New York. It very well may in
19 the future. These things can change at a drop of a
20 hat.

21 Q. Number 8 is profit. We talked a good
22 bit about profit with respect to New Jersey and
23 Rhode Island.

24 Is the way in which North American
25 Power factors in its profit in New York any

1 variable rate to do that but when we set our
2 variable rate, we certainly had that in mind that
3 one of the important functions of a variable rate in
4 our business is to drive customers back to a fixed
5 rate because a fixed rate is certainly a less risky
6 thing for us to do. We have an arrangement with the
7 customer, contractual arrangement and we prefer for
8 the most number of customers possible to be on a
9 fixed rate.

10 Q. And that's the same as in New Jersey
11 and Rhode Island and New York?

12 A. That's correct.

13 MR. BLANKINSHIP: Exhibit 16.

14 (Spreadsheets were marked as Exhibit
15 16 for identification.)

16 BY MR. BLANKINSHIP:

17 Q. Mr. Kinneary, this is Exhibit 16 and I
18 will represent this is another conglomerated exhibit
19 that we put together for the purpose of this
20 deposition and it is comprised of the New York tab
21 on the monthly pricing factor spreadsheets and it
22 covers the period February 2012 to April of 2015
23 although I think there might be one or two missing
24 in the middle.

25 So, with that said, Mr. Kinneary, do

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1 A. That's correct.

2 Q. The data reflected in these
3 spreadsheets do they come from a variety of sources?

4 A. Yes.

5 Q. Maybe as we can walk through it, you
6 can help me identify where you get that information.

7 At the top just under where it says
8 February 2012 pricing and then it has got the column
9 that says "cost component", I take it these are all
10 the factors that you consider when setting the
11 variable price?

12 A. Yes.

13 Q. And then it has got three columns
14 here, three more columns to the right; OR which, as
15 I recall, is Orange and Rockland?

16 A. That's correct.

17 Q. And it says "Zone G"; do you know what
18 that means?

19 A. Yes, the ISO in New York has zones set
20 up by letter, Zone A through K. This happens to be
21 Zone G.

22 Q. Is all of Orange and Rockland within
23 the same zone?

24 A. Yes, it is.

25 Q. But it looks like that's not

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1 necessarily true for Con Ed?

2 A. That's correct.

3 Q. So, it is not surprising that
4 electricity is more expensive in New York City than
5 it is in Westchester?

6 A. That's correct.

7 Q. So, earlier you testified that North
8 American Power sets the same rate for all the
9 customers within a particular utility, but I take it
10 a wrinkle of that is that Con Ed has these different
11 zones and, therefore, you have a variable rate that
12 is different for each of the zones within a utility?

13 MR. SIACHOS: Objection to form.

14 You can answer.

15 A. There are two pricing zones in Con Ed.
16 We provide a different pricing for each zone.

17 Q. Are there any other utilities other
18 than Con Ed that have different zones?

19 A. Yes, New York State Electric and Gas
20 and National Fuel Gas have various zones and we
21 provide two prices I believe in each one of those
22 utilities, but I tend to set those prices exactly
23 the same.

24 So, I would note two prices because we
25 started trying to do separate prices but it was just

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1 you -- how long had it been by January 2015 since
2 you had stopped offering variable rates?

3 A. It has got to be over a year in New
4 York.

5 Q. So at this point even though nobody
6 has been offered a variable rate product for over a
7 year, you still have more than twice as many people
8 on the variable rate than the fixed rate?

9 A. That goes up and down. Right now if
10 you look at our entire book of customers, we have
11 about 56 percent of our customers on a fixed rate.
12 That varies from state to state and from time to
13 time.

14 If you notice before when we were
15 looking at those mail pieces, a lot of what we
16 offered early on in New York were three month rates.
17 So customers go on, some renew, many don't. We kind
18 of moved away from those short term rates to longer
19 term rates that allow us to have more customers on
20 and, remember, we are just starting out at that
21 time.

22 A lot of customers did convert to
23 fixed rates and went off them in this period. So
24 the 31 percent we see on there at this point in
25 time, if you say how many of our customers were ever